

D. M. YATES

IBLA 82-841

Decided November 16, 1982

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer OR 29012 (Wash.).

Vacated and remanded.

1. Oil and Gas Leases: Discretion to Lease

A BLM decision refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be vacated where the reasons set forth are not supported by the record.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

D. M. Yates has appealed from the decision of the Oregon State Office Bureau of Land Management (BLM), dated April 16, 1982, rejecting noncompetitive oil and gas lease offer OR 29012 (Wash.) for 80 acres of land in Kittitas County, Washington, described as the W 1/2 NE 1/4, sec. 18, T. 17 N., R. 23 E., Willamette meridian.

The BLM decision states that "[t]he land is included within the boundaries of Power Project #2114 as shown on FPC Map # 2116-116, Exhibit K" and that "[t]he Federal Energy Regulatory Commission [FERC] objects to the leasing of the land as leasing would interfere with operation of the power project."

In his statement of reasons, appellant disputes the finding that the identified lands are within Power Project 2114. He asserts that examination of the records available at the BLM state office does not confirm that the W 1/2 NE 1/4 sec. 18 is in Power Project 2114 but rather that it is included in Powersite Classification 349, dated June 22, 1944, along with lots 1 and 4 of sec. 18 and other lands in T. 17 N., R. 23 E., Willamette meridian. He has also submitted a copy of a letter dated November 13, 1952, from the Secretary, Federal Power Commission (predecessor to FERC) to the Director, BLM, announcing the inclusion of various lands in Power Project 2114. The identified lands include lots 1 and 4 but not the W 1/2 NE 1/4 of sec. 18. He contends that he has been unable to locate any maps that corroborate a withdrawal of the W 1/2 NE 1/4 sec. 18 from leasing and that the record does

not support BLM's decision. He also urges that consideration be given to the alternative of a lease issued with a no surface occupancy stipulation.

Review of the BLM file for appellant's lease offer reveals a copy of a letter of February 1, 1980, from the Director, Office of Electric Power Regulation, FERC, to BLM in response to a BLM request concerning an earlier oil and gas lease offer for the same lands. n1 It states in part:

This refers to your letter concerning the filing of an oil and gas lease offer (OR 20801 (Wash)) which includes the following described lands withdrawn for power purposes:

Willamette Meridian, Washington
T. 17 N., R. 23 E.,
sec. 18, lots 1 and 4,
W 1/2 NE 1/4 and SW 1/4 SE 1/4.

The subject lands are withdrawn variously in Power Site Classification No. 349 and 405 dated June 22, 1944, and April 4, 1950, respectively. Lots 1 and 4 are also withdrawn for the Wanapum Reservoir Unit of Project No. 2114 and lie within the project boundary as licensed.

Those lands lying within the project boundary, as shown on map Exhibit K, F.P.C. No. 2114-116 should be excluded from any lease granted for the lands. It appears that the inclusion of Form 3730-1 in the lease granted would be sufficient to protect the power value of the remaining lands.

Unlike BLM, we read this letter to say that lots 1 and 4, and not the W 1/2 NE 1/4, of sec. 18 are within the power project and that it is the leasing of those lots to which FERC objected.

Powersite Classification 349 expressly covers lots 1 and 4 and the W 1/2 NE 1/4 of sec. 18 among other lands. The status plat for T. 17 N., R. 23 E., Willamette meridian, shows that lots 1 and 4 and the W 1/2 NE 1/4 of sec. 18 are included in Powersite Classification 349 but that only lots 1 and 4 of sec. 18 are covered by Power Project 2114. In addition, the map originally attached to the FERC recommendation letter, as found in lease file OR 20801 (Wash.), shows only lots 1 and 4, and not the W 1/2 NE 1/4, of sec. 18 as being within project boundaries.

[1] Under the provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976), public lands are available for leasing

1/ Oil and gas lease offer OR 20801 was also filed by appellant Yates. BLM rejected the offer on June 9, 1981, as to the W 1/2 NE 1/4 sec. 18, T. 17 N., R. 23 E., Willamette meridian, for the same reasons as expressed in the current decision. The lease as issued covered various other lands including lots 1-4, 6, E 1/2 W 1/2, W 1/2 SE 1/4 sec. 18, T. 17 N., R. 23 E., Willamette meridian and included powersite stipulation, Form 3730-1, covering activity within powersite classifications, reservations, or projects.

at the discretion of the Secretary of the Interior. The Board will uphold a BLM decision refusing to issue a lease provided that it sets forth the reasons for doing so and the background data and facts of record support the conclusion that the refusal is required in the public interest. Esdras K. Hartley, 54 IBLA 38, 88 I.D. 437 (1981); Robert P. Kunkel, 41 IBLA 77, 78 (1979); see Cartridge Syndicate, 25 IBLA 57 (1976). Where public domain and is withdrawn for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values. Esdras K. Hartley, supra. See Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976); Esdras K. Hartley, 23 IBLA 102 (1975). n2

The record does not support BLM's statement that the W 1/2 NE 1/4 of sec. 18 is within Power Project 2114 and that its leasing is objectionable to FERC. To the contrary, it appears that FERC agrees to the leasing of the W 1/2 NE 1/4 subject to the inclusion in the lease of Form 3730-1, which is the powersite stipulation. Accordingly, the case will be remanded to BLM for readjudication of the lease offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is vacated and the case remanded to that office for further consideration.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ This is distinguished from leasing of minerals in acquired lands of the United States under section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), which requires the consent of the agency having jurisdiction over the lands containing such minerals. 43 CFR 3109.3-1. See Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

